

October 1, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**RECONSIDERED AND REVISED
REPORT AND DECISION ON PRELIMINARY PLAT APPLICATION**

SUBJECT: Department of Development and Environmental Services File No. **L97P0056**

BIFROST GATE
Preliminary Plat Application

Location: East side of 124th Avenue SE, generally between SE 299th Street and SE 301st Street (if both roads were to be extended)

Applicant: Vintage Hills, LLC, *represented by*
Colin Lund
Triad Associates
11814 115th Avenue NE
Kirkland, WA 98034
Telephone: (425) 821-8448
Facsimile: (425) 821-3481

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Kim Claussen
900 Oakesdale Avenue SW
Renton, WA 98055-1219
Telephone: (206) 296-7167
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	APPROVE, subject to conditions
Department's Final Recommendation:	APPROVE, subject to conditions (modified)
Examiner's Decision:	APPROVE, subject to conditions (modified)
Examiner's Reconsidered Decision	APPROVE, subject to conditions (modified)

EXAMINER PROCEEDINGS:

Hearing Opened:	July 24, 2001
Hearing Closed:	July 24, 2001
Examiner's First Decision	August 21, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Wetlands
- Sensitive areas
- Buffers
- Buffer averaging

SUMMARY:

Grants preliminary approval to the subdivision of 14.67 acres into 53 single family residential building lots.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information.**

Owner:	Erik Martinson 16615 124 th SE Renton, WA 98058
Developer:	Vintage Hills, LLC Attn. Brian Ross 7947 159 th Pl. NE, Suite 102 Redmond, WA 98052 (425) 869-1300
Engineer:	Triad Associates 11814 115 th Ave NE Kirkland, WA 98034 (425) 821-8448
STR:	4-21-5

Location:	The site lies on the east side of 124 th Ave SE, generally between SE 299 th Street and SE 301 st Street (if both roads were to be extended).
Zoning:	R-4 P
Acreage:	14.67 acres
Number of Lots:	53
Density:	Approximately 3.5 units per acre
Lot Size:	Ranges from approximately 4,000 to 7,000 square feet
Proposed Use:	Single-family detached dwellings
Sewage Disposal:	City of Auburn
Water Supply:	Water District #111
Fire District:	King County District #44
School District:	Auburn
Complete Application	
Date:	December 9, 1997

2. **Proposal.** Vintage Hills, LLC (“Applicant”), represented by Triad Associates, proposes to subdivide 14.67 acres classified R-4P into 53 single family residential building lots. With lot sizes ranging from approximately 4,000 to 7,000 square feet, the proposed subdivision would achieve a density of approximately 3.5 dwelling units per acre, within the density range authorized by the R-4 classification. A generally accurate depiction of the proposal is attached to the preliminary report prepared by the Department of Development and Environmental Services (“DDES” or “Department”) dated July 24, 2001 (exhibit no. 2). A revised and therefore more accurate depiction of the proposal is included in this hearing record as exhibit no. 7. The conditions of final plat approval stated on pages XX through XX of this Examiner’s report are based on exhibit no. 7.

3. **State environmental policy act (SEPA).** On May 25, 2001, the Department issued a threshold determination of non-significance regarding the proposed development. That is, the Department, on that date, published its determination that, based on a review of the environmental checklist and other relevant environmental documents, the proposal would not cause probable significant adverse impacts on the environment. Therefore an environmental impact statement was not required prior to proceeding further. No agency, tribe, person or other entity appealed that determination. The environmental review record is incorporated in this hearing record.

4. **Department recommendation.** The Department recommends granting preliminary approval to the proposed plat of Bifrost Gate, subject to the conditions of final plat approval recommended on pages 6 through 11 of its July 24, 2001, preliminary report (exhibit no. 2), as amended by exhibit nos. 17 and 27. With those exhibits, the Department recommends the following changes to its preliminary report:
 - a. **Shared lot access.** The Department deletes its recommended condition no. 8F, which would have required joint use driveway tract development for proposed lot nos. 38 and 39. See, however, finding no. 4b, following.

- b. **Private access tracts.** In the Department’s preliminary report, recommended condition no. 8g would have required tracts J and I to be designed as private access tracts. In its final recommendation, the Department recommends that tracts J, I and G shall be designed as private access tracts.
- c. **Direct access to “Road A”.** In its preliminary report, the Department recommended a prohibition of direct vehicular access to proposed “road A”, with certain exceptions. The Department now recommends, “*there shall be no direct vehicular access to or from road A from lots 1 and 13*”.
- d. **Wetland/buffer fencing.** In its preliminary report, the Department inadvertently omitted its recommendation regarding sensitive areas fencing. In its final report, text is provided for recommended condition 14g that would require the applicant to provide a 4 foot tall split rail fence along the boundaries of the wetlands and associated buffer.
- e. **Recreation space plan requirements.** In its preliminary report, the Department recommended that the applicant be required to submit for review an approval its detailed recommended space plan to DDES and King County Parks. Responding to issues and concerns raised in the hearing, the Department recommends amending recommended condition no. 16a to include also the Bonneville Power Administration (BPA) and the City of Tacoma Water Department as recipients of the detailed recreation space plan for “review and review approval”.
- f. **Easement holder review.** Again responding to the issues addressed at hearing, the Department adds the following new condition to its final recommendation:

The applicant shall provide letter(s) of acknowledgement from Tacoma Water and BPA for any sensitive area mitigation proposed within those easements. These letters shall be provided to DDES concurrent with the engineering plan approval.

- 5. **Applicant response.** The applicant agrees with and accepts the Department’s final recommendation *except* for the following issues and concerns:
 - a. **Roadway compensation mitigation.** A portion of the proposed Road A, an essential and necessary internal circulation street, will cross a class 2 wetland and wetland buffer. The Applicant has proposed a compensation/mitigation package which the Department does not accept. KCC 21A.24.330.N is relevant and will govern.
 - b. **Buffer averaging.** The Applicant wants the buffer averaging plan now proposed to suffice. The Department considers that plan to include buffers that are too narrow; that is, some of the proposed buffers in the buffer averaging plan prepared by the Applicant exceed the Department’s standard for minimum buffers. KCC 21A.24.320.B is relevant and will govern.

6. **Applicant' request for reconsideration.** On September 6, 2001, this office received a letter from Don Hill of Triad Associates representing the Applicant, Mr. Brian Ross of Vintage Hills, LLC, regarding items of concern to Mr. Hill that were contained in the Examiner's August 21, 2001 Report and Decision on Bifrost Gate. Exhibit no. 28, attached. That letter, "provided to make the record clear," contains apparent requested changes in the Examiner's first report and decision. Some of the changes sought, such as clarification of the project's new ownership, would not require a reconsidered or revised Examiner's report. Even though the Examiner's August 21, 2001 report no longer accurately indicates project ownership, the preliminary plat approval runs with the land. The ownership inaccuracy, therefore would not hinder final plat approval and therefore requires no revision.

However, Mr. Hill also raises concern regarding whether the preliminary plat approval authorizes 53 lots or 52 lots. The Applicant's preliminary plat drawing, entered as exhibit no. 10 would, if approved, authorize 53 lots. The preliminary approval granted by the Examiner on August 21, 2001, however, is based upon an earlier preliminary plat drawing (exhibit no. 7) which proposes only 52 lots. Increasing the number of lots beyond the number authorized by the Examiner's report and decision definitely requires a reconsidered report and decision. No other remedial action, other than appeal (and the appeal period in this case expired September 4, 2001) is available in the procedural codes that apply. See, in general, KCC 20.24 and, in particular, KCC 20.24.250 (reconsideration of final action).¹ Finding no. 9 below, addresses the reconsideration issue regarding 52 versus 53 lots.

Finally, Mr. Hill, in his letter received September 6, 2001, attached, continues the debate regarding whether to require compensation for lost flood storage capacity due to the Road A crossing of the central wetland contained within the subject property. In the hearing, the Applicant lost that debate. Conclusion no. 3 of the Examiner's August 21, 2001 report and decision, to which Mr. Hill objects, makes that clear. This issue is discussed further in finding no. 9, following below.

7. **Wetland mitigation plan; Roadway displacement of wetland capacity.** The Department finds the wetland mitigation plan offered by the Applicant to be unclear and incomplete. Two items are salient. First, the Applicant's summary does not include all calculations necessary to enter a final plan approval. Second, the calculation of lost hydro-storage area due to roadway development to be lacking. The Applicant responds, essentially, that the wetland/buffer storage capacity lost directly due to displacement of storage capacity by this proposed roadway development is inconsequential. Having reviewed the record, your Examiner agrees with the Department's position on both deficiencies. It is neither new nor unusual to require a calculation of the storage capacity of displaced wetland materials due to land development.

Mr. Hill's September 4, 2001 letter (exhibit no. 28) reiterates the position taken in his public hearing testimony, that the Road A crossing of the central wetland does not warrant flood storage compensation. This position is based on the notion that, "the extent of the existing flooding area at the southerly end of the existing wetland does not extend to the Road A crossing." He promises analysis supporting this position to be presented at the time of DDES engineering plan submittal/review. Condition no. 7.g. on page 9 of the Examiner's August 21, 2001 report and

¹ KCC 20.24.250.A provides that any final action by the Hearing Examiner may be reconsidered by the Examiner if the action was based in whole or in part on erroneous facts or information.

Decision, and on page 10 of this report and decision, requires the Applicant to provide flood storage compensation for the 100 year storm event “for *any* displaced flood plain storage due to the wetland crossing for Road A.”

8. **Easement holder comments required.** A portion of the proposed mitigation area, within which the Applicant proposes wetland enhancement or buffer enhancement, is subject to City of Tacoma (Water Department) and BPA easements. The Department expresses concern that Tacoma or BPA may have concerns regarding these proposed changes in landscape within their easement areas. The Applicant notes that these agencies are only *easement* holders, not fee owners. Ultimately, however, the authority of Tacoma and BPA in this matter will probably rest upon the actual easement language.
9. **52 versus 53 lots.** As noted earlier, the preliminary plat drawing entered as exhibit no. 7 proposes 52 single-family residential building lots, whereas the Applicant’s *revised* preliminary plat drawing entered as exhibit no. 10 proposes 53 building lots. Both proposals fall within the permissible development density range authorized by the R-4 zoning classification. The Department does not object to the higher density 53 lot proposal, *provided* that the wetland enhancement and mitigation requirements discussed elsewhere in this report are satisfied.

As noted earlier, the Applicant requests reconsideration of the Examiner’s August 21, 2001 report and decision in order to substitute exhibit no. 10 (53 lots) for exhibit no. 7 (52 lots).

10. **Department report adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated July 24, 2001 are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner’s report which are submitted to the King County Council.
11. **Findings as conclusions.** Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

CONCLUSIONS:

1. Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.
2. KCC 21A.24.320 establishes wetland buffer standards. The parties agree that the wetland at issue is a class 2 wetland. KCC 21A.24.320.A.2 requires a 50 foot wide buffer around class 2 wetlands. However, KCC 21A.24.320.B allows buffer width averaging, subject to qualifying provisions. Those qualifying provisions require that the buffer averaging “provide additional protection” to the wetland *or* enhance the wetland functions. Further, KCC 21A.24.320.B requires that the total buffer area shall not decrease when buffer averaging.

Since adoption of the sensitive areas ordinance in 1993, DDES has ordinarily and routinely required a minimum 35 foot wide wetland buffer when averaging a 50 foot wide class 2 buffer. Since the December 9, 1997 complete application date for Bifrost Gate, that administrative practice has been adopted as public rule. The Applicant argues that, as applied in this case, the Department's requirements are unconstitutionally vague. However, the 35 foot wide minimum width policy-in-practice, communicated to the Applicant by DDES, appears to quite satisfactorily provide the certainty that the Applicant desires.

The Applicant also argues that the minimum width standard was not formally adopted on the date of complete application (date of vesting).

However, the 35 foot wide policy in this case, was not pulled willy-nilly out of a hat. It is a standard which, if followed, will treat this Applicant the same as all other Applicants of comparable situation and circumstance during the past several years (according to DDES testimony). The Applicant asks for a special exception to this practice which should not be granted.

3. KCC 21A.24.330.N allows wetland road crossings under certain circumstances:

- King County determines that no alternative access is practical;
- All crossings minimize impact to the wetland and provide mitigation for unavoidable impacts through restoration enhancement or replacement of disturbed areas;
- Crossings do not change the overall wetland hydrology;
- Crossings do not diminish the flood storage capacity of the wetland; and
- All crossings are constructed during summer low water periods.

The Department and the Applicant disagree regarding whether the proposed Bifrost Gate plan meets all of these road crossing requirements. In particular, their debate focuses on whether the crossings diminish the flood storage capacity of the wetland. The Department ordinarily and routinely requires a calculation of roadway displacement of wetland storage capacity, then requires compensation for that flood storage capacity (which would otherwise be lost). The hearing record shows that these calculations, however minimal the storage area lost might be, have not been provided to DDES. They ought to be. Engineering plan approval should not be granted until the conceptual mitigation plan provides for lost flood storage compensation.

The Applicant's request for reconsideration, discussed in finding nos. 6 and 7, above, adds no new information to the Road A flood storage displacement issue. However, the condition of final plat approval that would address this issue during engineer plan review provides sufficient flexibility to allow DDES to accept the Applicant's position on this issue *if* at the time of engineering plan review the Applicant makes its case for reducing or eliminating the flood storage requirement. Thus, final plat approval condition no. 7.g., stated on page 10 of this report will not be changed.

4. The Applicant proposes a buffer averaging make-up area for the buffer south of Road A to be located north of road A. DDES argues that this proposal “may not provide the same protection”. We see nothing problematic about this particular aspect of the Applicant’s proposal. It is, after all, the same wetland. It should be treated as such, as the Applicant has argued.
5. The Examiner notes that although the Department and Applicant have agreed to Tacoma and BPA “approval” of the mitigation/enhancement plan, administrative responsibility rests solely with DDES, thus, what we are truly looking for is BPA and Tacoma “review and comment”. Should either agency adamantly oppose the Applicant’s plan, that is a matter between that agency and the Applicant. However, nothing in county code authorizes delegation of administrative plat review and approval authority to non-County agencies. Recommended condition no. 16a, below, is revised by the Examiner consistent with these observations.
6. Considering the facts contained in finding no. 6, above, the August 21, 2001 decision to authorize 52 lots, rather than the 53 lots must be regarded as based on factual error. That error is corrected in the Examiner’s decision, that follows below. See, particularly, the introductory language that precedes final plat approval condition no. 1 on page 8 of this report.
7. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
8. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
9. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
10. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

DECISION:

The proposed plat of Bifrost Gate, as illustrated by preliminary plat drawing exhibit no. 10 of this hearing record, is GRANTED PRELIMINARY APPROVAL; *subject* to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.

2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department, associated with the removal of existing septic system(s) and wells.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."

- d. The proposed development contains two drainage subbasins located in the east and west portions of the site. Unless otherwise approved by DDES, the following drainage control standards shall be used for the design of facilities:
 - East Basin – As required by the Soos Creek Basin Plan (Page 108, Soosette Standard), the release rate for R/D facilities shall be 70 percent of the pre-developed 2-year rate. The facility volume shall be the 100-year, 24-hour volume as determined by the SCS curve-number method.
 - West Basin – Storm water facilities shall control the post developed 2-year, 10-year, and 100-year peak flow rates to one-half the 2-year, 2-year, and 10-year pre-developed peak flow rates, respectively.
 - e. The applicant for BiFrost Gate has received conditional approval for a drainage variance application (File L99V0024) to allow the use of two off-site drainage facilities located within the adjacent plat of Duberry Hill. The final drainage plans for the project shall comply with the conditions of approval as stated in the variance decision letter dated April 13, 1999.
 - f. Runoff control facilities shall be located in a separate tract and dedicated to King County. Biofiltration of storm water as specified by the 1990 drainage manual is required for water quality enhancement.
 - g. The final drainage plans shall provide designs to allow continued hydrologic flows to the wetland in Tract D and E. Flood storage compensation for the 100-year storm event shall also be provided for any displaced floodplain storage due to the wetland crossing for Road A.
 - h. During final engineering review, the applicant's engineer shall evaluate the design thresholds for Special Requirement No. 5 in the drainage manual and provide any applicable water quality facilities. A Class 2 stream with salmonids is located downstream from the site in the eastern subbasin.
 - i. A wetland is located on the property; therefore, a floodplain analysis shall be performed as specified by Special Requirement No. 9 in the drainage manual. The 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat.
8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
- a. 124th Ave. SE shall be improved along the frontage of the property as an urban minor arterial including minimum of 22-feet of pavement from centerline. During final engineering review, the applicant shall demonstrate that frontage improvements on 124th Ave. SE and the project entrance comply with King County design standards for sight distance.

- b. The entrance road to the project extending easterly from 124th Ave. SE to the second intersection with Road B, shall be improved as an urban neighborhood collector with 36-feet of road width. The remaining portion of Road A, shall be improved as an urban subcollector.
- c. As shown on the preliminary plat, portions of Road A are located within easements for the City of Tacoma and Bonneville Power Administration (BPA). Prior to King County approval of the engineering plans, the applicant shall submit letters of approval from both Tacoma and BPA.
- d. Road E and the northerly extension for Road B shall be improved as urban subcollector streets.
- e. Roads B and D shall be improved as urban subaccess streets. Road C shall be improved as an urban minor access street.
- g. Tracts J, I and G shall be designed as private access tracts. The serving lots shall have undivided ownership of the tract and be responsible for its maintenance. Notes to this effect shall be shown on the engineering plans and final plat. Improvements shall conform to KCRS 2.03 for urban minor access roads, which include 22 feet of paving. The minimum tract width shall be 26 feet with a maximum length of 150 feet.
- h. Temporary cul-de-sacs shall be provided at the southern terminus of Roads B, C, and D. As an alternative, the applicant shall acquire public road easement or right-of-way from the adjacent property owner and build the street extensions and/or cul-de-sacs off-site.
- i. Twelve feet of right-of-way shall be dedicated along the frontage of 124th Ave. SE to provide 42 feet from centerline.
- j. Tract H shall be improved in accordance with the alley designs in KCRS 2.09. The alley shall be designed to connect with the adjacent alley in the plat of Duberry Hill.
- k. Street trees shall be included in the design of all road improvements, and shall comply with Section 5.03 of the KCRS.
- l. Street illumination shall be provided at the intersection with 124th Ave SE in accordance with KCRS 5.03.
- m. 124th Ave. SE is designated an arterial street which may require designs for bus zones and turnouts. As specified in KCRS 2.16, the designer shall contact Metro and the local school district to determine specific requirements.
- n. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.

9. King County Code 16.82.150.D requires seasonal limitations for construction within the Soos Creek basin. During the period October 1 through March 31, clearing and grading is not allowed unless certain provisions are complied with as outlined in the code. The applicants engineering plans and construction procedures shall demonstrate compliance with the applicable code requirements.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. There shall be no direct vehicular access to or from Road A from lots 1 and 13. A note to this effect shall appear on the engineering plans and final plat.
13. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
14. The Applicant shall provide a 4 ft. split rail fence along the boundaries of the wetland and associated buffer (aka SAT). Fencing details shall be shown on the engineering plans. The fencing shall be maintained by the individual lot owner and/or homeowners' association as identified on the face of the plat.

A. Wetlands

1. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge, except as provided by subparagraph 3., below.
2. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
3. Buffer averaging may be proposed, pursuant to KCC 21A.24.320, provided the total amount of the buffer area is not reduced, below 35 width, subject to review and approval by a DDES Senior Ecologist.
4. A minimum building setback line of 15 feet shall be required from the edge of the tract.
5. Fencing

B. Alterations to Streams or Wetlands

1. If alterations of streams and/or wetlands are approved in conformance with KCC 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval, to guarantee that the mitigation measures are installed according to the plan.
2. Once the mitigation work is completed to the satisfaction of the assigned Senior Ecologist, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.

15. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat.

The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).

- a. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES, King County Parks, BPA and Tacoma Water, prior to or concurrent with the submittal of the engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
- 17. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
- 18. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 124th Ave SE is on a bus route. If 124th Ave SE is a bus route, the street tree plan shall also be reviewed by Metro.
 - g. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one

year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

19. The Applicant shall provide letter(s) of acknowledgement from Tacoma Water and BPA for any sensitive area mitigation proposed within easements owned or managed by those agencies. These letters shall be provided to DDES before engineering plan approval.

ORDERED this 1st day of October.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 1st day of October, to the parties and interested persons of record:

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Finkbeiner Development
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MS OAK-DE-0100

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MS OAK-DE-0100

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Site Development Services
MS OAK-DE-0100

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MS KSC-TR-0222

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LUSD/CPLN
MS OAK-DE-0100

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DDES/LUIS
Land Use Inspections
MS OAK-DE-0100

Larry West
DDES/LUSD
Site Development Services
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Any appeal shall be limited to only those items in this report and decision that are changed from the Examiner's first (August 21, 2001) report and decision.

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before October 15, 2001***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before October 22, 2001***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Court-house, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE July 24, 2001 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO: L97P0056

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Kim Claussen, Nick Gillen, Eileen McManus, and Pete Dye. Participating in the hearing and representing the Appellant was Colin Lund, Triad Associates. Susan Burgemeister also participated in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L97P0056
- Exhibit No. 2 Department of Development and Environmental Services Preliminary report, dated July 24, 2001
- Exhibit No. 3 Application dated December 9, 1997
- Exhibit No. 4 Environmental Checklist dated & received March 11, 1999 (revised)
- Exhibit No. 5 Declaration of Non-significance dated May 25, 2001
- Exhibit No. 6 Affidavit of Posting indicating January 16, 1998 as date of posting and January 21, 1998 as the date the affidavit was received by the Department of Development and Environmental Services; *Notice of Application*
- Exhibit No. 7 Plat Map dated April 2, 2001 (revision)
- Exhibit No. 8 Land Use Map 709E & W
- Exhibit No. 9 Assessors map NW-NE-SW-SE 4-21-5
- Exhibit No. 10 Revised plat map received July 20, 2001 & associated Triad cover letter
- Exhibit No. 11 SWM Adjustment decision dated April 13, 1999 (file no. L99V0024)
- Exhibit No. 12 Conceptual recreation space plan (received April 2, 2001)
- Exhibit No. 13 Dept. of Energy/BPA letter dated March 12, 2001
- Exhibit No. 14 Tacoma Water letter dated March 22, 2001
- Exhibit No. 15 B-twelve wetland studies (dated 1/24/01; 5/13/00; and 3/9/99)
- Exhibit No. 16 Traffic-David I. Hamlin (dated Jan. 23, 2001; April 27, 2000; and March 1998)
- Exhibit No. 17 Revised & additional recommendations
- Exhibit No. 18 Color Map of Wetlands
- Exhibit No. 19 Map 100 year Flood Plan
- Exhibit No. 20 Site color photographs
- Exhibit No. 21 Buffer Averaging Illustration, Sue Burgemeister
- Exhibit No. 22 50 ft Buffer map
- Exhibit No. 23 Site plan showing neighboring plats
- Exhibit No. 24 Water Certificate dated 7/20/01
- Exhibit No. 25 BPA Easement
- Exhibit No. 26 Tacoma Easement
- Exhibit No. 27 New recommended condition from DDES

The following exhibits were offered and entered into the record October 1, 2001, pursuant to the Applicant's request for reconsideration.

- Exhibit No. 28 Letter from Don Hill, Triad Association, to Deputy Examiner Tutus, received September 6, 2001